
The Effects of Chinese Imports on U.S. Companies

May 22, 2003

10:00 A.M.

Rm. 2359, Rayburn House Office Building

**U.S. House of Representatives
Committee on Appropriations
Subcommittee on Commerce, Justice, State,
the Judiciary, and Related Agencies**

**TESTIMONY OF JON VESSEY
VESSEY AND COMPANY, INC.**

**ON BEHALF OF
CALIFORNIA FRESH GARLIC
PRODUCERS ASSOCIATION**

TESTIMONY OF JON VESSEY

Good morning. My name is Jon Vessey, and I am president of Vessey and Company, a California fresh garlic producer, and a family farm, now in its fourth generation. I am speaking on behalf of my company and the other California fresh garlic producers, which collectively grow and pack nearly all of this country's fresh garlic, or about 130 million pounds each year.

Our industry was nearly destroyed ten years ago by a huge surge of very low-priced fresh garlic from China. As our first chart shows, Chinese imports grew from less than four million pounds in '91, to over 54 million pounds in '93. These imports were sold here at prices far below the California growers' cost of production.

In 1994, the Commerce Department concluded that Chinese garlic imports were being dumped here at about one-fourth the Chinese cost of production. Commerce imposed a dumping duty of nearly 400 percent on all future imports from China. This duty -- which still applies to all but two Chinese exporters -- quite literally saved the domestic fresh garlic producers, and the thousands of American jobs our companies provide.

Today, we are again threatened by what seems an endless tidal wave of very low-priced Chinese garlic imports. As our first chart shows, Chinese garlic imports remained well below three million pounds per year from '95 through '99. But imports then spiked dramatically, to almost 16 million pounds in 2001, and to over 54 million pounds last year -- the same amount as entered ten years ago, which precipitated the dumping duties. Unless these imports are stopped, our industry will soon be destroyed.

With Commerce's dumping order against Chinese garlic imports still in place, how could this be happening? There are three causes.

First, millions of pounds of Chinese garlic have been fraudulently imported into the United States during the past three years as having been produced in other Asian countries, such as Thailand, Vietnam, the Philippines and Pakistan. As our first chart shows, a relatively small amount of Chinese garlic was transshipped to this country from '95 through '99. But then Chinese garlic transshipments jumped to 3 million pounds in 2000, then to 8 million pounds in 2001, and to almost 12 million pounds last year.

Since 1995, we have provided U.S. Customs with a tremendous amount of information that demonstrates that Chinese garlic is being transshipped through these Asian countries. We understand that Customs has asked the Justice Department to assist Customs in conducting criminal investigations of the U.S. importers that are engaged in this fraud. Justice, however, has refused to authorize such investigations. Mr. Chairman, your subcommittee could help us considerably by encouraging Justice to work with Customs in investigating this fraud.

The good news is that Customs last summer began using its "trace metals" testing procedure to determine the true country-of-origin for fresh garlic imports. Trace amounts of metals and other tiny elements from the growing fields are left in certain crops like fresh garlic as water passes through them during the growing process. This residue creates distinct patterns in the crops that differ by region. Customs has used these patterns to create profiles of garlic grown in China and the countries through which Chinese garlic has been transshipped. These profiles enable Customs to determine the true country of origin for fresh garlic imports.

Since Customs' implementation of this testing procedure late last summer, Customs has found that virtually all garlic imports from other countries in Asia actually were grown in China. As a result, the amount of Chinese garlic being fraudulently transshipped through these countries has dropped dramatically, as is demonstrated by our second chart. I understand, however, this program is in danger of losing its funding, and that Customs has already stopped testing fresh garlic imports. Mr. Chairman, Congress should not allow the curtailment of this very successful program.

In contrast to Customs' efforts, Commerce has thus far turned a blind eye to the fraudulent transshipment of Chinese garlic through third countries. In a recent administrative review of the Chinese garlic dumping order, Commerce refused to even recognize that the domestic industry had placed on the record hard evidence that showed that a certain exporter in Thailand had transshipped millions of pounds of fresh Chinese garlic through that country. Instead, Commerce merely accepted the Thai exporter's and U.S. importers' self-serving claims that the garlic was grown in Thailand. This is a disturbing result from the agency that has the principal responsibility for enforcing the U.S. antidumping law.

The second reason for the huge surge in Chinese garlic imports is that tens of millions of pounds of Chinese garlic are being imported during Commerce's conduct of what are called new shipper administrative reviews. The new shipper procedure was added to the dumping law in 1995, as one of the changes supposedly required by the new WTO Antidumping Code. In a new shipper review, Commerce calculates a separate dumping rate for a foreign exporter that did not ship to the United States during the period examined in the original dumping investigation.

Of Commerce's 84 completed new shipper reviews, 41 -- or almost half -- have involved Chinese exporters. Of the Chinese reviews, 26 -- or two thirds -- have resulted in zero dumping rates. The ease with which Commerce has awarded Chinese new shippers zero dumping rates has dramatically undermined the effectiveness of many of the dumping orders on Chinese imports.

Commerce has also terminated another 20 Chinese new shipper reviews, but only ten of these were terminated in a manner prejudicial to the Chinese exporters. Seven of these 10 were terminated for the exporter's failure to fully cooperate with Commerce, and only three were terminated because Commerce determined that the sale under review was not a *bona fide* commercial transaction.

We don't have time here to discuss the many facets of Commerce's deeply flawed conduct of Chinese new shipper reviews. What I want to focus on is the catastrophic damage that is being inflicted on the domestic fresh garlic industry by a special privilege that is given to a new shipper while Commerce is conducting a new shipper review.

Normally, a U.S. company that imports a product covered by an antidumping order must, for each new shipment, deposit in cash with Customs an amount equal to the value of the shipment, multiplied by the specific dumping rate of the foreign exporter. Until recently, all Chinese exporters of fresh garlic had a single dumping duty deposit rate of 376 percent. Thus, a U.S. importer typically must deposit with Customs three dollars and seventy-six cents for every dollar's worth of Chinese garlic it imports. This cash is held by Customs as security against the actual amount of dumping duties Commerce may calculate are owed during a regular administrative review of the dumping order. Until Commerce started conducting new shipper reviews two years ago, the substantial cash deposit requirement on Chinese garlic imports significantly limited the amount of these imports U.S. importers were able to handle.

Instead of cash, a U.S. importer of a foreign exporter that is undergoing a new shipper review is allowed to satisfy the dumping duty deposit requirement with only a bond. Of course, the cost of a bond is a fraction of the cash the importer would otherwise have to deposit with Customs. Where, as with Chinese garlic, the dumping duty deposit rate is substantial, the ability of an importer to use a bond in lieu of cash enables it to handle a substantial amount of the import. This bonding privilege has resulted in tens of millions of pounds of Chinese garlic being imported into the United States during the past two years that would never have been shipped here had this privilege not been available.

The first new shipper review under the Chinese garlic dumping order was requested in November of 2000. Like virtually all Chinese new shipper review requests, this one was based on a single sale of a few thousand pounds of Chinese garlic, despite the fact that fresh garlic is virtually never traded internationally in quantities smaller than about 42,000 pounds -- the amount a standard shipping container holds. Further, the price of this sale was much too high, given the prevailing market price for garlic.

After 16 months of extremely costly investigation, Commerce finally ruled in March of 2002 that the new shipper's single sale was not a *bona fide* commercial transaction. Commerce terminated the review, which ended the importer's ability to use the bonding privilege. But this was hardly a victory for the domestic industry, because during 2001, that new shipper exported almost 8 million pounds of fresh garlic to the United States. The relatively low prices at which this huge volume was sold here significantly disrupted the U.S. market.

Everyone saw during 2001 the ease with which Chinese garlic, supposedly burdened by a 376 percent dumping duty, could be shipped into this country by a new shipper. As a result, three Chinese exporters requested new shipper reviews in November 2001. One of these reviews was terminated a year later because of the exporter's failure to cooperate with Commerce, and one of the new shippers was awarded a zero dumping rate in December 2002. The third review is not yet complete.

But, like the first new shipper review, the results of these reviews are really beside the point, for these three new shippers collectively shipped over 42 million pounds of fresh garlic to this country in 2002. This incredible amount, combined with the 12 million pounds of Chinese garlic that was transshipped through third countries into the United States last year, resulted in total Chinese garlic imports in 2002 exceeding 54 million pounds -- an amount seen only once before, in 1993, the year before Commerce first imposed antidumping duties.

The deluge is only getting worse. Two more Chinese garlic exporters requested new shipper reviews in November of last year. As our third chart shows, the volume of Chinese garlic imports for the first quarter of this year is three and a half times greater than for the first quarter of 2002. If this rate of increase continues, total imports for 2003 will exceed 150 million pounds, which is far greater than the domestic industry's annual average production.

As a result, the U.S. fresh garlic market is in chaos. All available cold storage warehouses are bulging with unsold Chinese imports and California product from the 2002 harvest. Further, the 2003 harvest is already underway in China, and is set to begin in California in June. Over the past three years, the total number of acres planted by the domestic industry has declined by 30 percent. Our crop has shrunk to the size of the '95 crop, when we began recovering from the first onslaught of Chinese imports.

In other words, the domestic fresh garlic industry is quickly vanishing, and the primary cause is the bonding privilege enjoyed by the U.S. importers of Chinese garlic exported by so-called new shippers. Amazingly, the bonding privilege that was included in 1995 with the new shipper review amendment to the U.S. dumping law was not -- and is not -- required by the WTO Antidumping Code. For some unknown reason, Congress gratuitously granted this privilege to new shipper exporters and their U.S. importers. This gift is quite literally killing the domestic garlic industry. By deleting a few words from the new shipper amendment to the dumping law, Congress right now could prevent our industry's demise.

The third cause for the tremendous spike in Chinese garlic imports is the deeply flawed methodology Commerce recently used to determine that two Chinese garlic exporters are not dumping fresh garlic in this country. For example, Commerce determined for one of these exporters that its material costs for producing fresh garlic was about five cents a pound, which is ludicrously small for a high value cash crop like fresh garlic.

Commerce also assigned a value for a by-product of the Chinese fresh garlic harvest -- a product called garlic sprout -- that was about twice the value of the fresh garlic itself. This is an impossible result, for a by-product in accounting terms must have a value that is substantially less than the principal product from which it is derived. When Commerce offset the value of the fresh garlic by Commerce's value for the by-product, Commerce amazingly ended up with a large, negative value for the fresh garlic. Commerce only achieved an affirmative value of a few cents per pound by including the value of the materials in which the garlic is packed.

These two Chinese exporters were given zero dumping margins several months ago. Their ability to ship fresh garlic to this country without any dumping duty no doubt has enabled them to contribute to the huge surge of fresh garlic imports that has occurred since the beginning of this year.

In sum, my industry is supposed to be protected by a dumping duty of almost 400 percent on Chinese garlic imports from all but two exporters. Yet we were plagued last year by over 54 million pounds of cheap Chinese garlic. And it appears that an even larger amount will enter this year unless the government takes immediate, corrective action.

Two years ago, the U.S. International Trade Commission renewed our dumping order for an additional five years, largely due to the Commission's view that the domestic industry remained highly vulnerable to Chinese imports. Yet the dumping order today is giving us no protection whatsoever. My industry's desperation has brought me here today to ask for Congress' help before it is too late.

Thank you, Mr. Chairman. I would be happy to answer any questions you and your colleagues may have.

U.S. Imports of Fresh Garlic From China

Annual 1991 - 2002

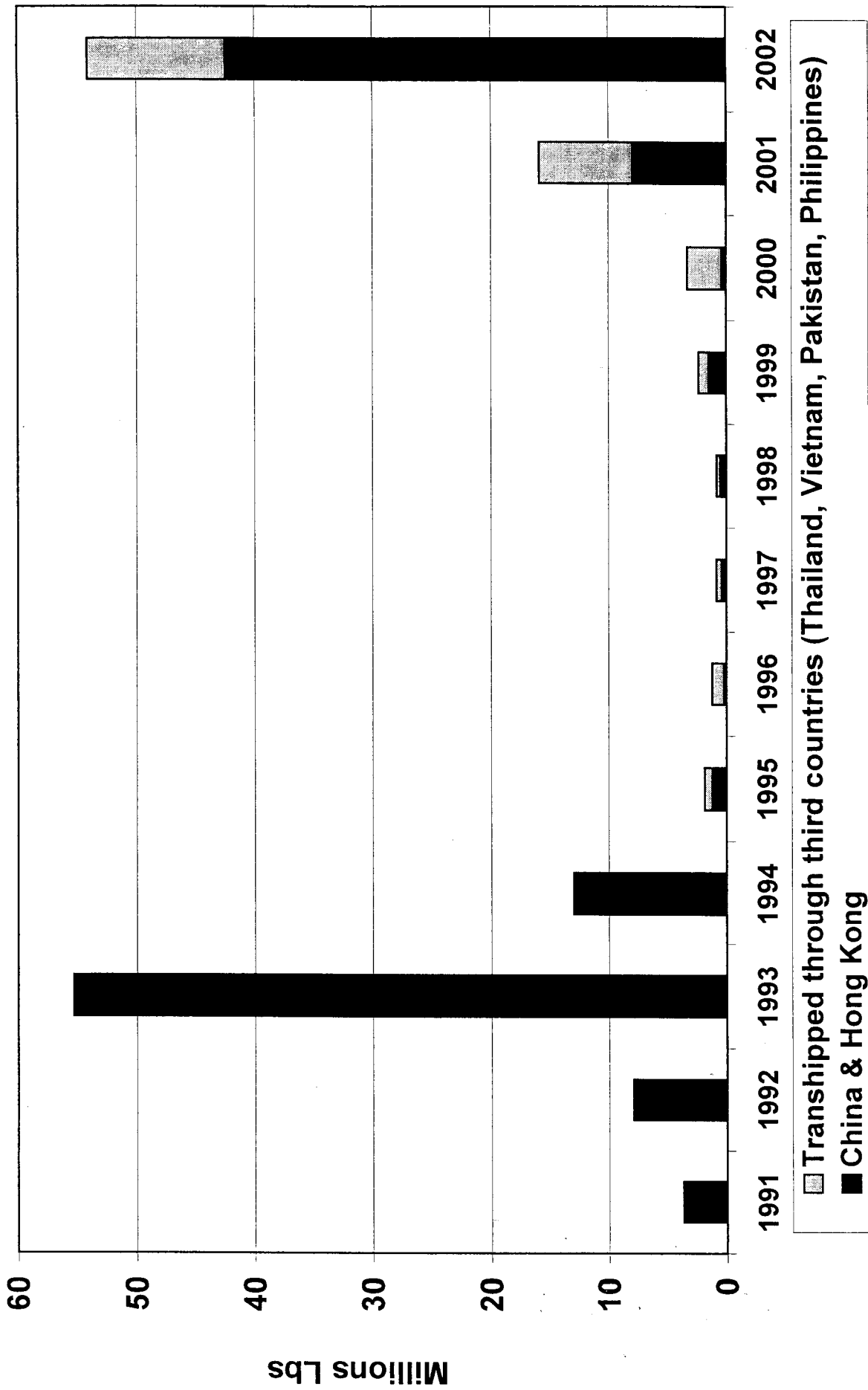


CHART 1

U.S. Imports of Fresh Garlic From China

March Year-to-Date 1999-2003

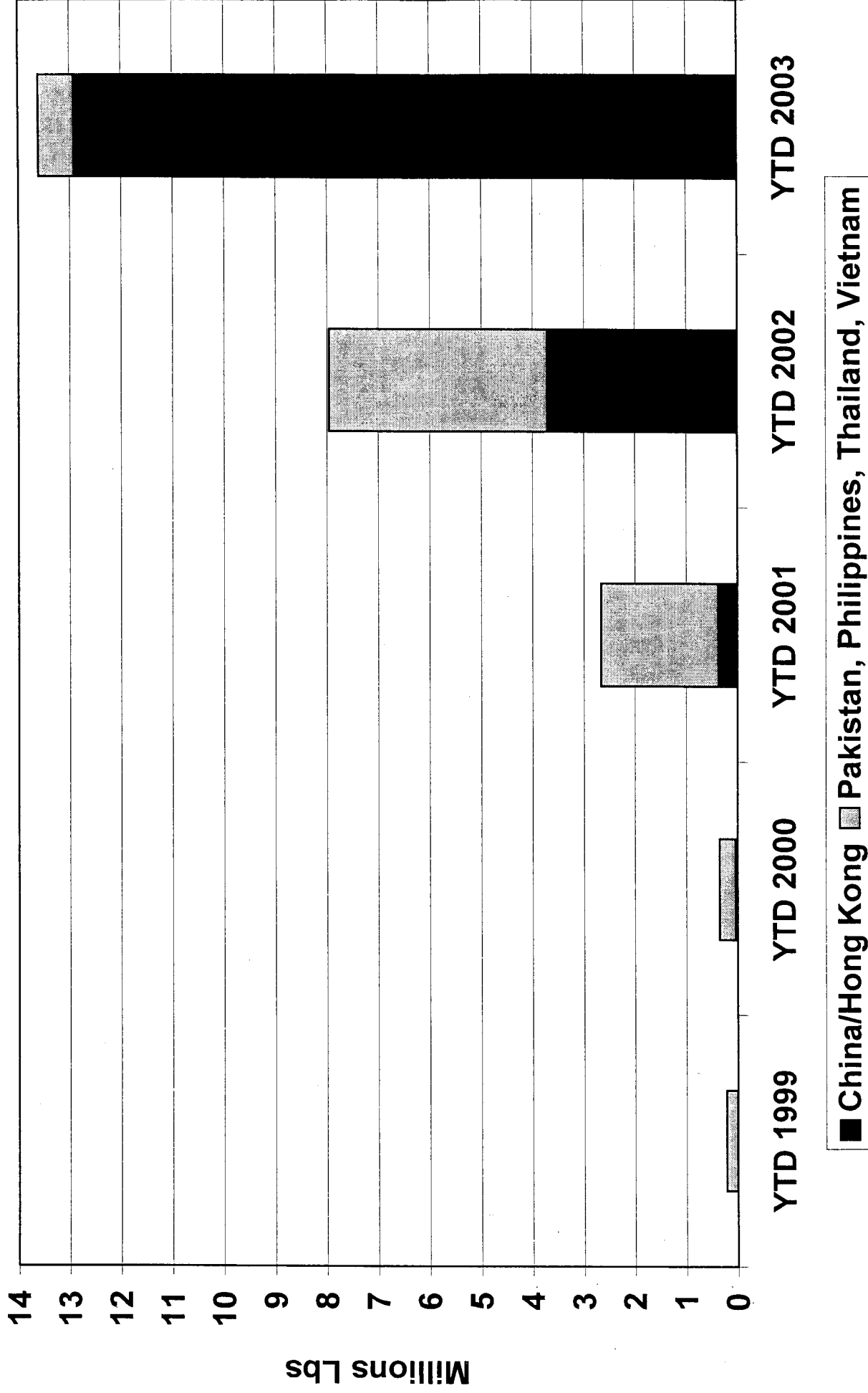


CHART 2

U.S. Imports of Fresh Garlic

Transhipped through Third Countries
Pakistan, Philippines, Thailand and Vietnam
January 2001 - March 2003

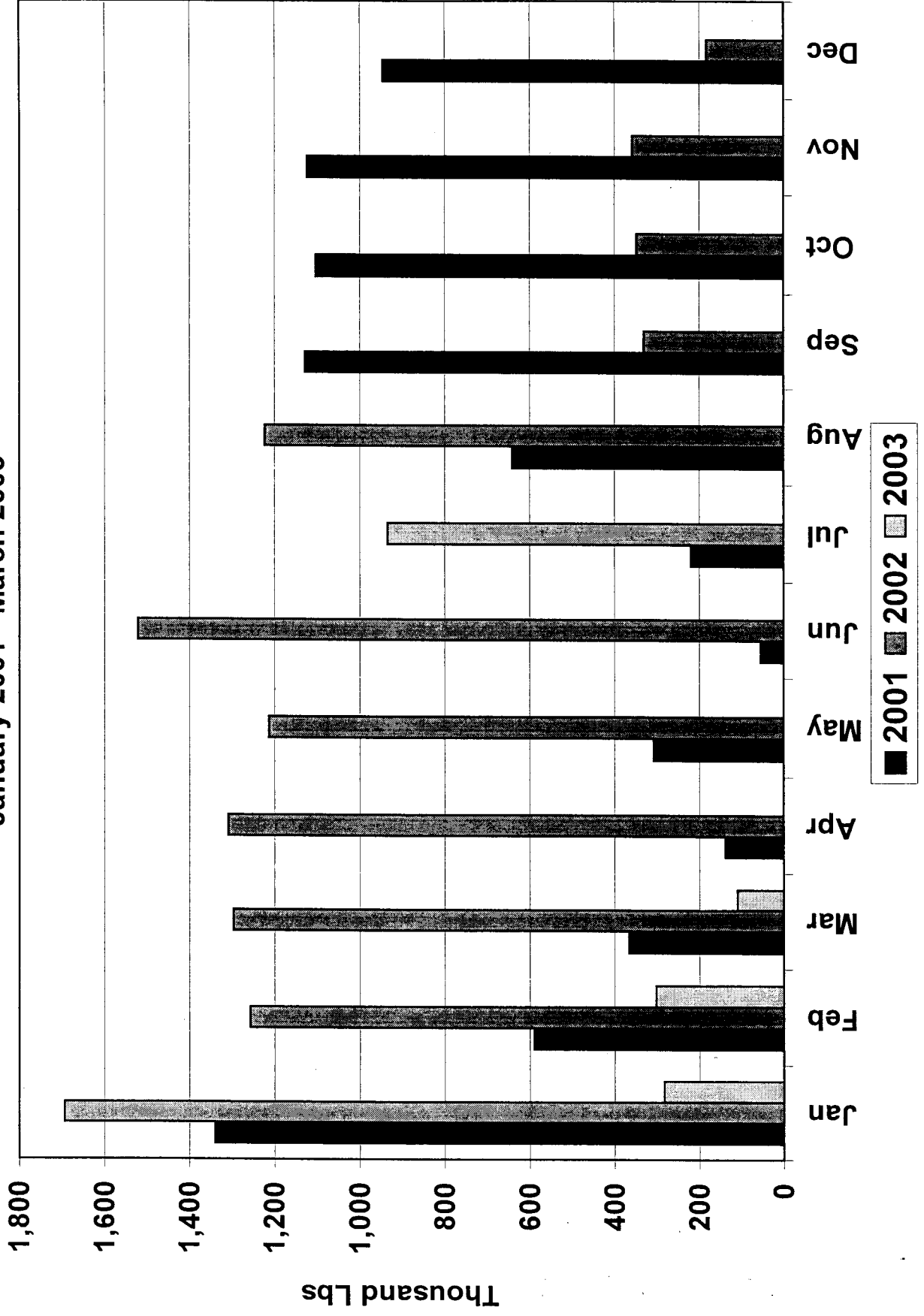
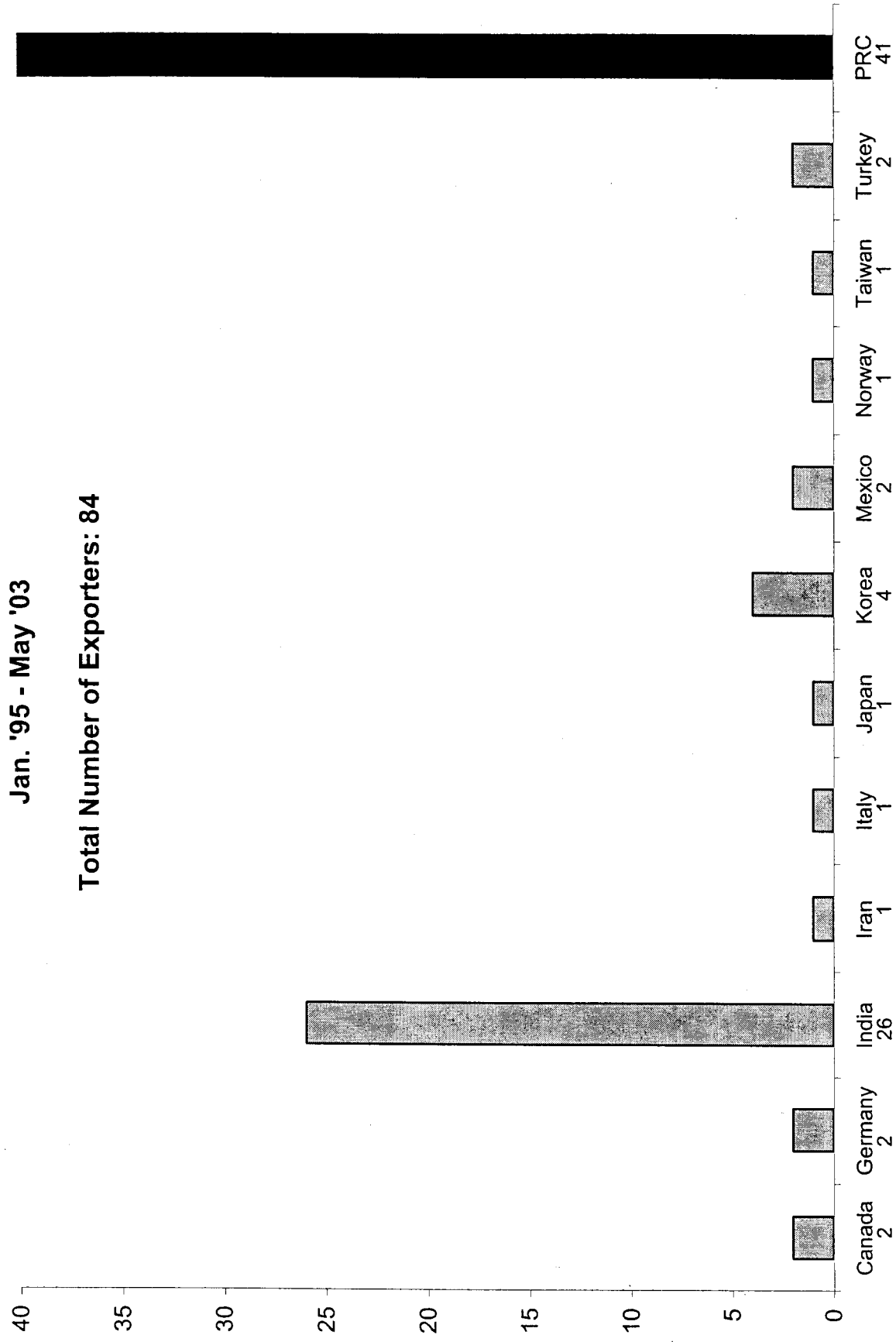


CHART 3

U.S. Commerce Department's Completed "New Shipper" Administrative Reviews

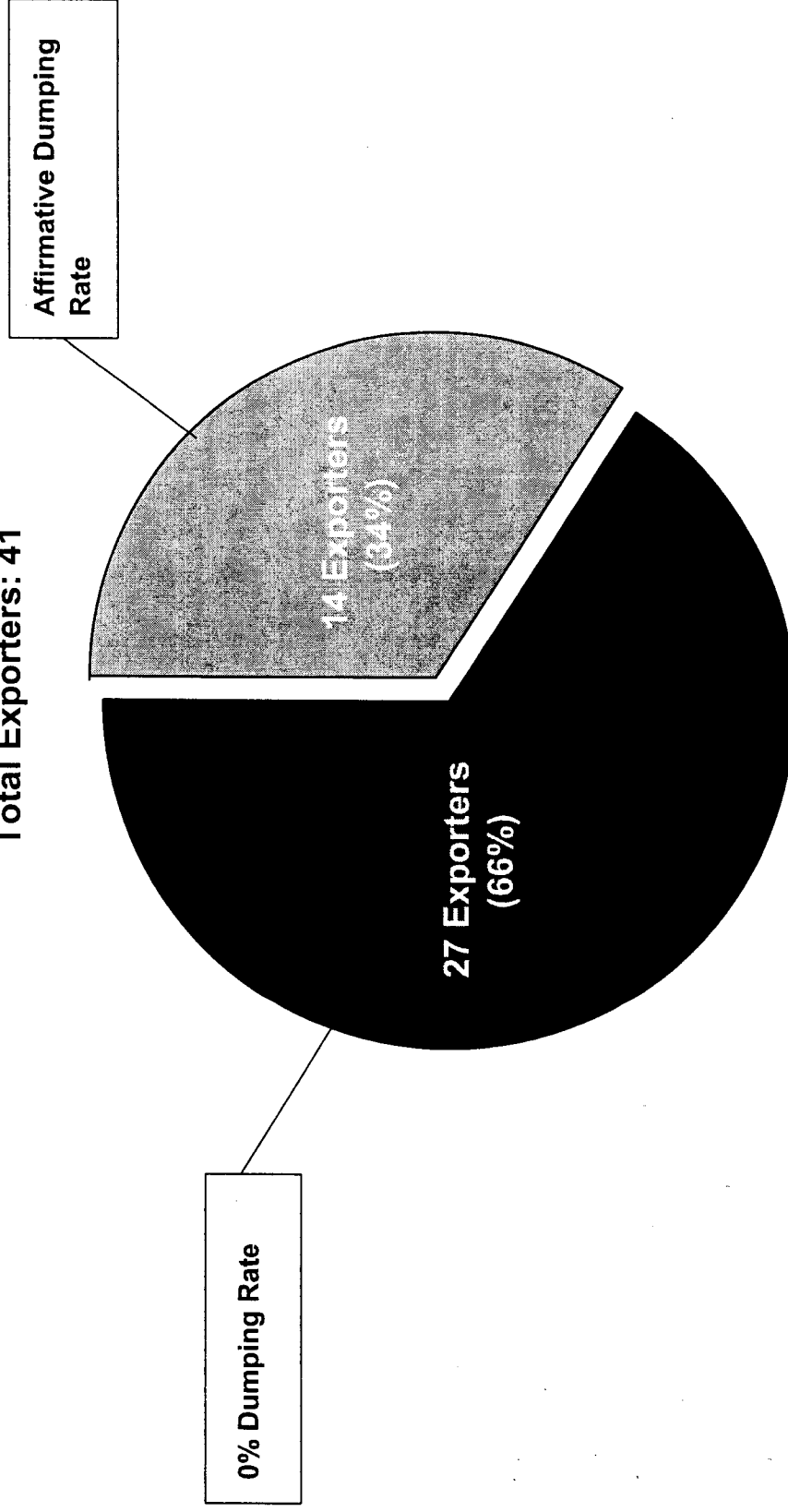


U.S. Commerce Department's Completed "New Shipper" Administrative Reviews

People's Republic of China

Jan '95 - May '03

Total Exporters: 41



U.S. Commerce Department's Terminated "New Shipper" Administrative Reviews

People's Republic of China

Jun '95 - May '03

Total Exporters: 20

Terminations w/o Prejudice to Exporter: 10 (left side of the chart)

Termination w/Prejudice to Exporter: 10 (right side of the chart)

